

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JULLIAN MEDELES,

Plaintiff,

v.

Case No.

UNITED STATES OF AMERICA,

Defendant.

COMPLAINT FOR PERSONAL INJURY AND DAMAGES

COMES NOW Plaintiff Jullian P. MeDeles, by and through his attorneys, FINE LAW FIRM (Mark D. Fine and Charlotte L. Itoh) and for his Complaint against Defendant states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter and parties to this action pursuant to the jurisdiction conferred upon it by 28 U.S.C. § 1331 and 28 U.S.C. § 1346(b).

2. Venue is proper in this district because Plaintiff is a resident of New Mexico, and all of the acts complained of occurred in New Mexico. Plaintiff's cause of action arose in New Mexico.

3. Plaintiff submitted an administrative claim for the claims set forth below to the United States Postal Service.

4. On January 8, 2014, the United States Postal Service denied the claim.

5. This complaint was timely filed within six (6) months of the denial of the claim.

PARTIES

6. At material times, Plaintiff was a resident of New Mexico.

7. At materials times, the United States Postal Service was an independent agency of the federal government.

8. The United States of America is the proper party to be sued under the Federal Tort Claims Act.

FACTUAL ALLEGATIONS

9. On or about February 19, 2013, Plaintiff was a pedestrian in Santa Fe, New Mexico.

10. Plaintiff was crossing the street in a marked crosswalk when a U.S. postal truck struck him.

11. The postal truck, #1254092, was operated by Dwayne Martinez, an employee of Defendant.

12. Mr. Martinez was operating the vehicle in the course and scope of his employment.

13. Following the incident, Mr. Martinez drove away, and failed to render aid to Plaintiff.

14. As a result of being struck by the postal truck, Plaintiff suffered significant injuries.

COUNT I - NEGLIGENCE

15. Plaintiff restates the allegations set forth above.

16. Defendant's employee Dwayne Martinez owed Plaintiff a duty to exercise ordinary care in the operation of his vehicle.

17. Defendant's employee Mr. Martinez breached this duty by driving in a careless, inattentive and imprudent manner, by failing to keep a proper lookout, and by failing to maintain proper control of his vehicle, among other acts and failures to act.

18. Mr. Martinez's breach of duty caused Plaintiff to be struck and injured.

19. As a proximate result of the negligence of Defendant's employee, Plaintiff has been damaged in amounts to be proven at trial.

20. Under the concept of *respondeat superior*, Defendant is responsible for the negligent conduct of its duly authorized agents and employees.

COUNT II – NEGLIGENCE PER SE

21. Plaintiff restates the allegations set forth above.

22. NMSA §§66-7-201, *et seq.*, NMSA §§66-7-301, *et seq.*, and NMSA §§66-8-101, *et seq.* are in effect in order to protect persons such as Plaintiff from injuries caused by drivers who fail to obey the various safety precautions contained therein, specifically, but not limited to, driving in a careless, inattentive and imprudent manner, failing to keep a proper lookout, and failing to maintain proper control of the vehicle.

23. Defendant's employee violated NMSA §§66-7-201, *et seq.*, NMSA §§66-7-301, *et seq.*, and NMSA §§66-8-101, *et seq.* by driving in a careless, inattentive and imprudent manner, by failing to keep a proper lookout, and by failing to maintain proper control of his vehicle, among other acts and failures to act.

24. As a proximate result of the negligence of Defendant's employee, Plaintiff has been damaged in amounts to be proven at trial.

25. Under the concept of *respondeat superior*, Defendant is responsible for the negligent conduct of its duly authorized agents and employees.

WHEREFORE, Plaintiff respectfully requests that this Court award him damages, costs, pre-judgment interest, post-judgment interest and any such other and further relief as the Court deems just.

Respectfully submitted,

/s/ Electronically submitted

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